IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2493 OF 2005

Sudhakar Waman Ghadge @ Yerunkar & Ors. : Petitioners

V/s.

Vishnu Krishna Ghadge alias Yerunkar : Respondent

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Mr.M.S.Lagu for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

August 12, 2005.

P.C.:

1. By this petition, the petitioners, who claim to be the owners of the suit premises and the structure, have challenged the order of the two Courts below permitting the respondent to carry out repairs to the structure on the suit premises.

2. It appears from the finding of the Courts below that the respondent is in possession of the premises and the suit structure for the past 75 years.

3. Mr.Lagu, the learned counsel for the petitioners,

submitted that the appellate Court has committed a grave error in holding that the respondent has constructed the suit house. This is on the basis of a sentence which reads as follows:-

> "It is also seen that with the prior permission of the then owner the grand-father of the respondent had constructed suit house in Survey No.292 before 75 years and since then the respondent is in possession of the suit house continuously, and without any interference."

Obviously, this observation is not a conclusive observation and will not bind the trial Court at the time of the final disposal of the suit. Hence, this is not a ground for interfering with the impugned order.

4. The next submission of the learned counsel for the petitioners is that under the garb of repairs, the respondent may virtually reconstruct the whole house. This contention was also advanced before the lower appellate Court, but it has modified the order of the trial Court and directed:-

> "4. It is however made clear that the respondent would not be entitled to claim any benefit or equity on the basis of the repairs carried out by him in the suit house."

5. In this view of the matter, having regard to the fact that the house is in a dilapidated condition as found by both the Courts, I see no reason to interfere. The petition is, therefore, liable to be dismissed and is, accordingly, dismissed.

S.A. BOBDE, J.